

R E M A R K S

The claims have been amended by changing claims 21-24. Claims 20-24 remain in the application.

Reconsideration of this application is respectfully requested.

Claims 21-24 have been corrected by changing the dependency in each from claim 1 to claim 20.

Claim 20 was rejected under 35 U.S.C. §103(a) as being unpatentable over Van den Heuval et al., U.S. patent No. 5,307,359, in view of Noreen et al., US Patent Application Publication No. 2002/0183059.

Claim 20 states; "...obtaining over a broadcast RF subcarrier of a commercial FM broadcast station, communication information necessary for the subscriber unit to automatically communicate with a brokering agent...". The examiner equates the "bulletin board controller" of Van den Heuvel to applicants' brokering agent.

Ignoring for the moment that the bulletin board of Van den Heuval is not stated to be operating on a commercial FM broadcast station, the Examiner states that Van den Heuvel teaches that the inbound resource "inherently" uses information from the outbound resource and that this information is analogous to applicants' "communication information", referring to Van den Heuvel's description of "a bulletin board inbound resource that is associated with the bulletin board outbound resource". Applicants agree that information is inherently used in Van den Heuval to determine the inbound link for the bulletin board. Applicants disagree that Van den Heuval teaches "communication information" that is "obtained over a ...subcarrier" (as required by applicants claim 1), and believes the meaning of "obtaining information over a subcarrier" to one of ordinary skill in the art excludes Van den Heuval's "association" of an inbound resource with an outbound resource, as Van den Heuval exemplifies by "paired frequencies, dedicated time slots in a single channel system, or with a simpler contention based single channel resource", which typify a priori defined relationships.

The Examiner combines Van den Heuval with Noreen to obtain the aspect of the communication information being obtained over a broadcast RF subcarrier of a commercial FM

broadcast. To establish a *prima facie* case of obviousness, and hence to find Claim 20 unpatentable under 35 U.S.C.103(a) over the combination of the Van den Heuvel and Noreen references, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based upon applicant's disclosure. MPEP at § 2142.

Applicants ask that the Examiner bear in mind that a *prima facie* case of obviousness is not shown where the proposed modification of a reference changes its principle of operation. MPEP §2143.01. Combining the use of an RF subcarrier of a commercial FM broadcast station (as in Noreen) with Ven den Heuval would be an attempt to describe the use of an RF subcarrier of a commercial FM broadcast station for an outbound resource of a bulletin board that is associated with in inbound resource of the bulletin board. However, commercial FM broadcast stations are not associated with inbound communication channels, and therefore the principle of operation of Van den Heuval (an inbound resource being associated with an outbound resource) would have to be altered to achieve applicants' "obtaining over a broadcast RF subcarrier of a commercial FM broadcast station, communication information necessary for the subscriber unit to automatically communicate with a brokering agent..".

The applicants believe that for these reasons, not all elements of applicants' claim 20 are described by Van den Heuval, nor by Noreen, nor by any combination of Ven den Heuval, Noreen, or the other cited art.

Therefore, applicants believe that claim 20 is patentable over the art cited and that claims 21-24 are also patentable, being dependent upon claim 20.

Applicant notes that any amendments or claim cancellations made herein and not substantively discussed above are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such amendments or cancellations not substantively discussed. Furthermore, any remarks made herein with respect to a given claim or amendment are intended only in the context of that specific claim or

amendment, and should not be applied to other claims, amendments, or aspects of Applicant's invention.

The applicants specifically reserves the right to prosecute claims of differing and broader scope than those presented herein, in a continuation application.

Accordingly, this application is believed to be in proper form for allowance and an early notice of allowance is respectfully requested.

Please charge any fees associated herewith, including extension of time fees, to 502117.

Respectfully submitted,

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